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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

MICHAEL HEILBRON,

Debtor.

Chapter 7

Case No. 1-18-42486 (ESS)

BENJAMIN PLAZA, JR.,
Chapter 7 Creditor

Plaintiff.

v.

Adv. Proc. No. 1-18-01055 (ESS)

MICHAEL HEILBRON,

Defendant.

**AMENDED COMPLAINT OF BENJAMIN PLAZA, JR. OF THE ESTATE
OF MICHAEL HEILBRON, OBJECTING TO
DISCHARGE OF DEBTOR**

BENJAMIN PLAZA, JR., chapter 7 creditor ("Plaintiff" or "Creditor") as and for
Creditor's objection to the discharge of the Debtor, hereby alleges by his counsel, Eric E.
Rothstein, that:

NATURE OF THE ACTION

1. This is an adversary proceeding in which plaintiff-creditor is seeking a determination as to the dischargeability of the debt by debtor to the plaintiff under 11 U.S.C. § 523(a)(6).

2. This adversary proceeding arose in and is related to the above-captioned bankruptcy case.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the Local Rules of this Court.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, as this adversary proceeding arises under title 7 of the United States Code (the “Bankruptcy Code”) and was commenced in the district in which the Defendant’s title 7 case is pending.

5. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(j). The statutory predicate for the relief requested is 11 U.S.C. § 523(6) and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) as applicable.

PARTIES

6. Michael Heilbron is the Debtor in the above-captioned bankruptcy case, having filed a voluntary chapter 7 petition on April 30, 2018 (the “Petition Date”).

7. Plaintiff, Benjamin Plaza, Jr., is a creditor who secured a judgment against the debtor for assault and battery in a lawsuit entitled *Benjamin Plaza, Jr., v. Michael Heilbron*, Supreme Court, Queens County, Index number 4417/2011.

**PLAINTIFF OBJECTS TO DISCHARGE BECAUSE
THE DEBTOR COMMITTED AN INTENTIONAL TORT**

8. On or about June 29, 2008, debtor Michael Heilbron assaulted plaintiff, Benjamin Plaza, Jr., by punching him in his chin, causing him to suffer, *inter alia*, a fractured mandible that required open reduction, internal fixation.

9. Debtor Michael Heilbron's aforesaid actions were willful and malicious and meant to cause injury to plaintiff.

10. Debtor Michael Heilbron's aforesaid actions intended to injure plaintiff, Benjamin Plaza, Jr., or Heilbron engaged in conduct that was substantially certain to cause injury to Plaza.

11. Subsequently, members of the New York City Police Department arrested debtor Michael Heilbron.

12. The Queens County District Attorney charged debtor Michael Heilbron with two counts of Assault in the Second, Penal Law §§ 120.05(1) and (2), Assault in the Third Degree, Penal Law § 120.00(1), and Harassment in the Second Degree, Penal Law § 240.26(1). Exhibit A.

13. On or about February 5, 2009, debtor Michael Heilbron, plead guilty to Assault in the Third Degree, Penal Law § 120.00, for "knowingly" assaulting plaintiff, Benjamin Plaza, Jr. Exhibit B.

14. On or about March 30, 2009, plaintiff, Benjamin Plaza, Jr., e-filed suit against debtor Michael Heilbron in Supreme Court, Queens County, under Index number 700053/2009.

15. Upon information and belief, the Court subsequently changed the Index number to 4417/2011 when the case was removed from the electronic filing system.

16. Debtor Michael Heilbron failed to serve an Answer and by decision dated August 31, 2009, Supreme Court granted plaintiff, Benjamin Plaza, Jr., a default judgment and set the matter down for an inquest on damages. Exhibit C.

17. Following an inquest, the Court awarded plaintiff, Benjamin Plaza, Jr., judgment in the principal amount of \$125,000 and entered judgment, including costs and interest, in the amount of \$128,739.96. Exhibit D.

18. In or about August 2016, debtor Michael Heilbron, represented by counsel, filed an Order To Show Cause in Supreme Court, Queens County, seeking to vacate the default judgment.

19. By order dated December 5, 2016, Supreme Court, Queens County, denied debtor Michael Heilbron's motion to vacate the default judgment. Exhibit E.

20. Upon information and belief, the payoff amount of the judgment, including accrued interest, is now at least \$225,169.66.

21. All or part of the debt owed to plaintiff by the debtor is non-dichargeable as it is a debt for willful and malicious injury caused by the debtor to the plaintiff as aforesaid within in the meaning of Section 523(a)(6) of the Bankruptcy Code.

22. As a direct result of the foregoing, the debtor's debt to the plaintiff should be excepted from discharge pursuant to Section 523(a)(6) of the Bankruptcy Code.

WHEREFORE, plaintiff, BENJAMIN PLAZA, JR., respectfully requests that this Court enter an Order denying the Debtor's discharge, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 17, 2018

s/ Eric E. Rothstein

Eric E. Rothstein
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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2018, a copy of the foregoing Complaint was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: New York, New York
September 17, 2018

s/ Eric E. Rothstein
Eric E. Rothstein
Attorney for Benjamin Plaza, Jr., Creditor
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EASTERN DISTRICT OF NEW YORK**

In re: MICHAEL HEILBRON,

Debtor,

BENJAMIN PLAZA, JR.,
Chapter 7 Creditor

Plaintiff,

Michael Heilbron's,

Defendant.

AMENDED OBJECTION TO DISCHARGE

ROTHSTEIN LAW PLLC
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